

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL CASE NO. 5:19-cv-00162-MR**

VAN BRETT PIERRE WATKINS,

Plaintiff,

vs.

FNU COPELAND, et al.,

Defendants.

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ORDER

THIS MATTER is before the Court on the North Carolina Department of Public Safety’s (“NCDPS”) sealed Notice [Doc. 22] regarding the Court’s Request for Waivers of Service [see Doc. 14]. Also pending is the Plaintiff’s *pro se* “Correction on date of incident ...” [Doc. 19] that was docketed as a Motion to Correct Date of Incident.

The Amended Complaint passed initial review against Defendants Copeland, Howell, Teague and John Doe, and the Court initiated the procedure for waiver of service. [Doc. 13]. Service waivers have been filed for “FNU Howell” (actually Shelby Howell); “FNU Teague” (actually Nicholas Teague); and “FNU Copeland” (actually Derrick Copeland). [Doc. 22]. NCDPS has been unable to waive service for John Doe (actually Christopher

A. Johnson) and has provided this Defendant's last known addresses under seal. [See Doc. 23].

The Clerk will be directed to notify the U.S. Marshal that Defendant Johnson needs to be served with the summons and Complaint in accordance with Rule 4 the Federal Rules of Civil Procedure. If Defendant Johnson cannot be served at the addresses provided by NCDPS, the U.S. Marshal shall be responsible for locating his home addresses so he may be served. See 28 U.S.C. § 1915(d) (in actions brought *in forma pauperis* under § 1915(d), “[t]he officers of the court shall issue and serve all process, and perform all duties in such cases”); Fed. R. Civ. P. 4(c)(3) (“At the plaintiff’s request, the court may order that service be made by a United States Marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915....”).

If the U.S. Marshal is unable to obtain service on Defendant Johnson, the U.S. Marshal shall inform the Court of the reasonable attempts to obtain service. The U.S. Marshal shall not disclose Defendant’s home address to the *pro se* incarcerated Plaintiff and shall file any document containing such address under seal.

The Clerk of Court will be instructed to update the Court's docket with the Defendants' correct names as reflected in this Order.

In his *pro se* "Correction on date..." the Plaintiff asks the Clerk to "[p]lease advise the judge that the day of the incident was Sunday, Jan. 6th 2018 at the last meal of the day...." [Doc. 19 at 1].

A plaintiff may amend the complaint once as a matter of course within 21 days after serving the complaint, or within 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), which is earlier. Fed. R. Civ. P. 15(a)(1). A plaintiff may subsequently amend with permission from the court which "shall be freely granted when justice so requires." Fed. R. Civ. P. 15(a)(2).

The Plaintiff seeks to amend the Complaint to change the date of the incident underlying his claims. However, he may not do so by way of a Letter to the Clerk. Further, piecemeal amendment will not be allowed. Accordingly, the Plaintiff's attempt to amend his Complaint in this manner is denied. This denial is without prejudice to the Plaintiff filing a Motion to Amend and proposed superseding Second Amended Complaint, subject to all procedural and timeliness requirements.¹

¹ The Court makes no ruling regarding the merit or procedural viability of such a Motion, or whether such a Second Amended Complaint would be permitted to proceed.

IT IS THEREFORE ORDERED that the U.S. Marshal shall use all reasonable efforts to locate and obtain service on **Defendant Christopher A. Johnson**. If the U.S. Marshal is unable to obtain service on Defendant Johnson, the U.S. Marshal shall inform the Court of the reasonable attempts to obtain service.


The Clerk is respectfully instructed to mail a copy of the Amended Complaint [Doc. 12], the Sealed Notice containing Defendant's last known addresses [Doc. 23], and this Order to the U.S. Marshal.

IT IS FURTHER ORDERED that the *pro se* "Correction on date..." [Doc. 19] is construed as a Motion to Correct Date of Incident and is **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Clerk is instructed to substitute Defendants' names in the Court's records as follows: Shelby Howell for "FNU Howell;" Nicholas Teague for "FNU Teague;" Derrick Copeland for "FNU Copeland;" and Christopher A. Johnson for "John Doe."

IT IS SO ORDERED.

Signed: June 15, 2021



Martin Reidinger
Chief United States District Judge

